IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

WEDNESDAY, THE 5TH DECEMBER 2007 / 14TH AGRAHAYANA 1929

RCRev..No. 356 of 2007

RCA.17/2004 of DISTRICT COURT,KOLLAM
RCP.3/2002 of MUNSIFF COURT, PUNALUR
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REVISION PETITIONER/APPELLANT/RESPONDENT:

GOPALAKRISHNAN, AGED 52 YEARS,
S/O.RAMAN ACHARY, RESIDING AT
RAMALAKSHMI VIHAR, MANCHALLOOR,
KOLLAM DISTRICT.

BY ADV. SRI.K.SHIBILI NAHA
SMT.A.LOWSY

RESPONDENT/RESPONDENT/PETITIONER:

UNNINNI, S/O.MATHAI,
PANDIYAZHAKATHU PUTHENVEEDU,
MANJAKKALA POST, NADUTHERI MURI,
THALAVOOR VILLAGE.

BY ADV. SRI.V.V.RAJA
SRI.M.T.SURESHKUMAR

THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON 05/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.Balakrishnan Nair &
K.P.Balachandran, JJ.

R.C.R.No. 356 of 2007

ORDER

Balakrishnan Nair, J.

The revision petitioner is the tenant and the respondent is the landlord. The landlord sought eviction under Sections 11(2)(b) and 11(3) of the Kerala Buildings (Lease and Rent Control) Act, 1965 (hereinafter referred to as 'the Act'). In this revision, the point that is mainly contended before us is the correctness of the finding by the authorities below under Section 11(3) of the Act.

2. The case of the landlord before the Rent Controller was that he is running a jewellery in the rented premises. He bona fide requires the petition schedule room also, along with the neighbouring rooms, which he has purchased, for shifting his jewellery business. He has no other convenient or suitable room in the locality for shifting his business. The tenant is not mainly

depending on the income from the tenanted premises. There are other suitable rooms available in the locality, to which, the tenant can shift his business, it is submitted. So, he sought eviction under Section 11(3) of the Act.

3. The tenant resisted the application contending that the landlord is presently doing the business in a building owned by him. Recently, he has spent substantial amounts for the renovation of the said premises. Since the landlord has got his own building, the need urged is not bona fide. Further, in the building purchased by the landlord, of which the scheduled room forms part, there is sufficient space in the first floor, which could be utilised for shifting his business, if his requirement is bona fide. It was also pleaded that he is mainly depending on the income from the tenanted premises for his livelihood. No other suitable rooms are available in the locality, to which, he can shift his business.

4. The Rent Controller, after considering the evidence on record, including the depositions of the witnesses, allowed the prayer under Section 11 (3) of the Act. The tenant appealed. The appeal also met with the very same fate. Hence this revision.

5. The learned counsel for the revision petitioner submitted that the landlord is presently doing business in a premises owned by him. According to the learned counsel, the burden is on the landlord to show that the building does not belong to him. But, the court below wrongly put the burden on him to prove the said case. The landlord asserted that the building, in which, he is doing the business does not belong to him. He cannot be asked to give negative evidence, to prove that the building does not belong to him. It is for the tenant, who raised the said claim, to prove the same. The appellate authority found that no evidence was tendered by the tenant to prove this point. The said finding of fact cannot be disturbed

by us in this revision. Secondly, the learned counsel for the revision petitioner contended that the tenant is entitled to get protection under the first limb of the second proviso to Section 11(3) of the Act. But, we notice that the appellate authority, relying on Exhibit B3 document, found that the income of the tenant from agriculture is Rs.45,000/-, whereas, his income from the jewellery business is only Rs.19,000/-. So, this document belies his claim that he is mainly depending upon the income from the tenanted premises. The second limb of the second proviso to Section 11(3) of the Act was not seriously canvassed before the appellate authority and therefore, it was not considered by it. Even if the finding under the second limb is in favour of the revision petitioner, he cannot resist eviction in view of the adverse finding on the first limb. No other points were urged.

In the result, the revision fails and it is dismissed. The learned counsel for the petitioner

prayed for some time to vacate the premises. We heard the learned counsel for the respondent on this point. Having regard to the facts of this case, the petitioner is granted six months' time from today to vacate the premises on condition that the he files an unconditional undertaking in the form of an affidavit before the execution court, undertaking to vacate the premises within the above said period of six months. The undertaking in this regard shall be filed within three weeks from today. Arrears of rent shall be deposited before the execution court, while filing the above undertaking. The petitioner shall continue to pay the monthly rent till the tenanted premises are vacated.

(K.Balakrishnan Nair, Judge)

5th December, 2007

(K.P.Balachandran, Judge)

tkv